



Paper No. 15

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DEC 30 2002

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| In re Application of | : | |
| David R. Hembree et al. | : | DECISION ON PETITION |
| Application No.: 09/302,576 | : | TO WITHDRAW THE |
| Filing Date: April 30, 1999 | : | HOLDING OF ABANDONMENT |
| Attorney Docket No.: 96-876.1 | : | |

This is a decision on the "Petition to Withdraw Holding of Abandonment Under 37 C.F.R. § 1.181(A)" filed on November 25, 2002. There is no fee for this petition.

The petition is **GRANTED**.

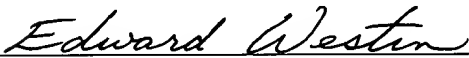
The application was held abandoned for failure to file a proper response to the Office action mailed on February 14, 2002. A Notice of Abandonment was mailed on November 6, 2002.

Petitioner asserts that a response to the Office action of February 14, 2002 was timely mailed on May 14, 2002. To support this assertion, petitioner has submitted a copy of the response and a copy of a stamped return postcard which properly identifies and acknowledges receipt of the response (a Transmittal Form; a Fee Transmittal Form; an Amendment/Response to the Office Action dated 2/14/02; an Information Disclosure Statement; and a PTO Form 1449) by the Patent and Trademark Office (PTO) on June 5, 2002. The copy of the Amendment/Response includes a Certificate of Mailing dated May 14, 2002 and thus would have been considered timely under 37 C.F.R. § 1.8.

A review of the application file record reveals that the above-identified response having been acknowledged as being received in the PTO on June 5, 2002 is not of record in the application file and cannot be located. More specifically, the Transmittal Form, the Fee Transmittal Form and the PTO Form 1449 are of record in the application file but the Amendment/Response is not. However, M.P.E.P. § 503 states that "(a) postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the Amendment/Response was timely received but lost after receipt thereof.

For the above stated reason, the petition is granted. The Notice of Abandonment mailed November 6, 2002 is hereby **VACATED** and the holding of abandonment is withdrawn. The copy of the Amendment/Response submitted with the petition on November 25, 2002 is accepted since the Amendment/Response originally submitted was lost.

The application file is being forwarded to the Technology Center 2800 support staff for entry of the Amendment/Response. The application file will then be forwarded to the examiner for prompt appropriate action.



Edward P. Westin, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components